




TO: Indiana's Workforce Investment System

FROM: Robert K. Robisch 
Interim General Counsel

DATE: June 29, 2011

SUBJECT: DWD Policy 2010-27
Head Start – U.I. Legislative Changes

Purpose

To explain when Head Start employees will not be entitled to use Head Start wages to establish a claim for unemployment benefits during breaks between successive terms or academic years, vacations, and regular holiday periods, based upon amendments to I.C. 22-4-14-7.

Rescissions

None

Background

Generally, employees who work for educational institutions cannot utilize their educational wages to establish a claim for unemployment benefits during scheduled break periods. Because of recent legislative changes to the Indiana Employment and Training Services Act, the Department is issuing this Policy to clarify unemployment benefit rights of Head Start program employees during of scheduled break periods.

Content

The applicable Indiana Code section is I.C. 22-4-14-7, which states as follows:

I.C. 22-4-14-7. Services performed for educational institutions [effective July 1, 2011].

(a) Benefits based on service in employment defined in [IC 22-4-8-2\(i\)](#) and [IC 22-4-8-2\(j\)](#) shall be payable in the same amount, on the [same] terms, and subject to the same conditions as compensation payable on the basis of other service subject to this article, unless otherwise specifically provided, subject to the following exceptions:

(1) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on the service for any week of unemployment commencing during the

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period between two (2) successive academic years, or terms, or during the period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform services in an instructional, research, or principal administrative capacity for any educational institution in the second of the academic years or terms.

(2) With respect to services performed in any capacity (other than those listed in subdivision (1) of this section) for an educational institution, benefits may not be paid based on the service of an individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, with respect to weeks of unemployment beginning on or after January 1, 1984, if compensation is denied to any individual under this subdivision and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subdivision.

(3) With respect to any services described in subdivision (1) or (2), compensation payable for these services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if there is reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(4) With respect to any services described in subdivisions (1) and (2), benefits shall not be payable on the basis of services in any such capacities as specified in subdivisions (1), (2), and (3), to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(5) For services to which [26 U.S.C. 3309\(a\)\(1\)](#) applies, if the services are provided to or on behalf of an educational institution, compensation payable based on the services may be denied as specified in subdivisions (1), (2), (3), and (4).

(b) For purposes of this section, benefits may not be denied during the period between academic years or terms to any individual having wage credits earned with other than an educational institution if the wage credits qualify the individual under section 5 [\[IC 22-4-14-5\]](#) of this chapter and the individual is otherwise eligible. In these cases, the claim shall be computed based on the wage credits earned with employers other than educational institutions reported for the

individual during the base period, in accordance with [IC 22-4-12-2](#) and [IC 22-4-12-4](#). Benefits paid based on the computation shall be only for weeks of unemployment occurring between academic years or terms. For any weeks of

unemployment claims other than between academic years or terms, the claims of these individuals shall be recomputed to include all base period wages.

The following criteria will be utilized to determine if a Head Start employee is employed in an educational capacity so as to cause a denial of the use of their educational wages to establish a claim for unemployment benefits during a scheduled break period: The program 1) is integrated with a local school system, or has as its primary purpose the educating of students; 2) has an established educational curriculum that is taught to the participants of the program; 3) has a set academic calendar; and 4) its employees have a reasonable assurance of employment once the scheduled vacation or break period concludes.

The purpose of this policy is to explain the standard that the Department will use to evaluate whether the claimant 1) worked for an educational institution, or in an educational capacity, under Indiana law; and 2) had reasonable assurance that he or she would return to work at the start of the next academic term, or at the conclusion of the vacation or break period.

Standard for Determining if Head Start Employees Performed Services for an Educational Institution and/or in an Educational Capacity

The Department will evaluate how the Head Start program operates in connection with a local school system, or in a manner similar to a local school system, in all major respects. As part of the evaluative process, the Department will consider certain factors, including but not limited to the following: 1) Whether the curriculum is designed to ensure age appropriate learning with the specific goal of education; 2) Whether the students receive academic instruction; 3) Whether the programs are conducted in the facilities of local school systems; 4) Whether the local school system is exercising some direction and control; 5) Whether the teachers and the assistants are required to have a specific educational background or specialized training; 6) Whether the teachers are required to prepare lesson plans; and 7) Whether the teachers receive their remuneration from a school system.

Evidence that a Head Start provides additional services such as social welfare programs does not preclude it from being an educational institution as long as the primary purpose of the program is to educate students.

Successive Terms or Customary Vacation Period Defined

The employer will bear the burden of proving to the Department that the Head Start employees were aware of the academic calendar at the start of an academic term, or at the time of hire. The employer should provide a copy of the academic calendar to show the start and the end dates of academic terms, official and customary vacation periods, and holiday recesses.

Reasonable Assurance of Employment Defined

I.C. 22-4-17-4 requires that the claimant have more than a speculative return to work date. The employer will bear the burden of proving to the Department that the claimant had a reasonable assurance that he or she would return to work to perform the same or similar services for Head Start at the start of the next academic term, or at the conclusion of the vacation or break period. To sustain its burden, an employer must show that it had an agreement with the claimant that employment would continue after said periods. Examples of an agreement include an official letter from Head Start to the claimant that provides the claimant with a return to work date, or a contract between Head Start and the claimant, setting forth the terms of the employment.

Standard for Determining if Head Start Employees Performed Services to or on behalf of an Educational Institution under I.C. 22-4-14-7 (a)(5)

To determine whether an individual's services are covered under this statutory subdivision, the Department will look to the specific circumstances of the services on a case-by-case basis. The Department will first determine whether the Head Start agency in question is a governmental entity, an Indian Tribe, or a nonprofit organization. If the Head Start agency falls within one (1) of these categories, the Department will then review the services to determine whether the services give some benefit or support to an educational institution, or whether the services are performed as an agent of, or on the part of, an educational institution. If the Head Start agency falls within one (1) of the above-stated categories, AND the services performed fall within one (1), or both, of the above types of services, then the subdivision will be applicable.

Restrictions

This policy is not intended to serve as the only basis a Head Start employee may or may not be determined to be eligible for unemployment benefits.

Ownership

DWD Legal Department
10 North Senate Avenue
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Effective Date

Immediately

End Date

Upon Rescission

Action

Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.